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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KINDERSTART.COM LLC, a California
limited liability company, on behalf of itself and
all others similarly situated,

Plaintiffs,

v.

GOOGLE, INC., a Delaware corporation,

Defendant.

Case No. C 06-2057 JF

**PLAINTIFF'S ADMINISTRATIVE
REQUEST UNDER LOCAL RULE 7-11
REGARDING FILING OF
OPPOSITION AND REPLY FOR
DEFENDANT'S SPECIAL MOTION TO
STRIKE UNDER CCP § 425.16 AND
MOTION TO STRIKE UNDER
FED.R.CIV.P. 8**

PROCEDURAL BACKGROUND

On August 11, 2006, the Court issued an order for briefing in connection with the filing of a subsequent amendment to the First Amended Complaint. For convenience, the ordered schedule, in relevant part, is reproduced below:

September 1, 2006 Deadline for filing SAC

September 22, 2006 Deadline for filing motion (s) responsive to the SAC

October 13, 2006 Deadline for filing opposition

October 20, 2006 Deadline for filing reply

Plaintiff KinderStart.com LLC ("KinderStart") timely filed its Second Amended Complaint on September 1, 2006. Defendant Google, Inc. ("Google") timely filed its responsive motions, which included (1) a motion to dismiss under Federal Rule of Civil Procedure ("Rule")

PLAINTIFFS' REQUEST UNDER L.R. 7-11
TO ALLOW PLAINTIFFS' OPPOSITIONS AS FILED

12(b) (the “12(b) Motion”), (2) a motion to strike under California Code of Civil Procedure § 425.16 (the “anti-SLAPP Motion”), and (3) a motion to dismiss/strike under Rule 8(a), 8(e), 41(b), 12(f) and 15(a) (the “Rule 8 Motion”), all on September 22, 2006.

On October 13, 2006, KinderStart timely filed its opposition to the 12(b) Motion before midnight that day and was assigned a filing date of October 13, 2006. However, due to a word processing problem in the office of Plaintiffs’ counsel, its oppositions to the anti-SLAPP Motion and the Rule 8 Motion were not received and registered by ECF until 12:03 a.m. and 12:05 a.m. on October 14, 2006, respectively. This was up to five minutes past the Court’s deadline. The software problem within the operations of Plaintiffs’ counsel is confirmed by its outside software consultant. See *Declaration of Linda Pomerantz*, attached hereto as Exhibit 1.

ADMINISTRATIVE REQUEST FOR CONSIDERATION OF OPPOSITIONS.

Plaintiffs understand the need to fully comply with deadlines imposed by the Court. While the Court has no standing order to about the consequences of an untimely opposition, other federal judges may deem this as a consent to the motion. See e.g., *Braun v. Morton, et al.*, 2006 U.S. Dist. LEXIS 5912 (N.D. Cal. Feb. 1, 2006, J. Jenkins) (“An opposing party’s failure to file a memorandum of points and authorities in opposition to any motion shall constitute consent to the granting of said motion.” Standing Order of Hon. Martin Jenkins, p 2). However, under Rule 6(b), the Court “for cause shown may at any time in its discretion . . . (1) [omitted] or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.” For the Supreme Court, the legal standard for excusable neglect is a four-part test that takes “account of all relevant circumstances surrounding the party’s omission. These include . . . the danger of prejudice to the [other party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395, 123 L. Ed. 2d 74, 113 S. Ct. 1489 (1993). Plaintiff believes that these conditions are satisfied in this instance in light of the brevity of the tardiness and the fact that counsel’s software had some unexpected problems.

In this case, to address the issue of the untimely oppositions to the anti-SLAPP Motion and Rule 8 Motion, on October 16, 2006, Plaintiffs counsel telephoned Defendant's counsel and informed them of the delay of the Plaintiffs' two filings, slightly past midnight on Friday, October 16, 2006. Plaintiffs offered Defendant, subject to the Court's approval, a period of up to an additional 24 hours to file their replies to these two motions. Under the circumstances, Defendant's counsel indicated at this time that it would not contest the untimely filing of the two oppositions. Further, if the court were to permit and consider Plaintiffs' untimely oppositions to the two motions in question as filed,¹ Defendant's counsel expressed that Defendant would not oppose (but did not request) a grant of up to an additional 24 hours for its replies to the two oppositions in question.

CONCLUSION

In light of the above, the accompanying declaration and the documents and pleadings on file herein, KinderStart respectfully requests the Court to consider and permit the filing of its oppositions to the anti-SLAPP Motion and the Rule 8 Motion. Further, in its discretion, the Court may consider extending Defendant's replies to these oppositions to the two motions be extended for up to an additional calendar day ending 12:00 a.m. on Saturday, October 21, 2006.

Dated: October 17, 2006

GLOBAL LAW GROUP

By: /s/ Gregory J. Yu

Gregory J. Yu, Esq.

Attorney for Plaintiff KinderStart.com LLC and
for the proposed Class and Subclasses

¹ The Court has allowed the extensions for oppositions to be granted under circumstances as agreed to by the parties. *See e.g. Ling Feng v. Frontier Communications Corporation*, 2001 U.S. Dist. LEXIS 16582, (N.D. Cal. 2001) (J. Fogel), at 6-7 (plaintiff's opposition deadline, with defendant's consent, was extended by the Court seven extra days).